



Loss includes only (a) principal and interest evidenced by the Note; (b) any loan subsidy due and owing; and (c) any principal and interest indebtedness on Government approved protective advances for protection and preservation of collateral. Interest (including any subsidy) shall be covered by this Loan Note Guarantee (Agreement) to the date of loss as defined in 7 C.F.R. part 3565, subpart J. Net proceeds received from liquidation of the collateral will be used in the amount of loss sustained by the Lender. If the Lender acquires the collateral, the net proceeds from collateral for calculating loss shall be determined by the Government as follows: (i) the collateral will be appraised at its current market value as of the date of acquisition by the Lender then (ii) deduct from such appraised value an estimate of liquidation costs which will include an allowance for the estimated time the property will be held by the Lender.

If the Government conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest after the date the Government accepts responsibility for the liquidation will not be covered by the Loan Note Guarantee.

Lender may sell the guaranteed loan only to a Lender which meets the qualifications and in the manner as provided in 7 C.F.R. part 3565. Such loan must not be in default at the time of the sale.

Lender may obtain participation in its loan under its procedures. Participation means a sale of an interest in the loan wherein the Lender retains the Note, collateral securing the Note, and all responsibility for all loan servicing and liquidation. A participant has no rights under this instrument.

## CONDITIONS OF THE GUARANTEE

### 1. Loan Servicing

Lender will be responsible for servicing the entire loan and Lender will remain mortgagee or secured party of record. The Lender may sell the loan servicing rights to a Government approved Lender when the purchasing Lender agrees to be bound by all of the same terms as the selling Lender and this Agreement and the Regulatory Agreement.

### 2. Full Faith and Credit

This Agreement constitutes an obligation supported by full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such lender or which the Lender participates in or condones. A Note which provides for the payment of interest on interest shall not be guaranteed. If the Note to which this Agreement is attached or relates provides for the payment of interest on interest, then this Agreement is void. In addition, this Agreement will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Government acquires knowledge of the forgoing. Any losses occasioned will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those approved by the Government. See Form RD 3565-2, "Conditional Commitment." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

3. As a condition of the guarantee, the Lender is to obtain borrower certification annually that the project is in compliance with the Regulatory Agreement and program requirements with respect to all aspects of project management.

4. The Lender must approve the Borrower's management plan and assure that the Borrower is in compliance with Government standards regarding property management, including the requirements set forth in 7 C.F.R. part 3565, subparts E and F.

5. Lender will receive all payments of principal and interest and any loan subsidy on the account of the entire loan.

6. Protective advances made by the Lender pursuant to Government regulations will be guaranteed against a percentage of the loss as provided in this Agreement.

7. This Agreement will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; (c) upon return of the Loan Note Guarantee to the Government with a written request for termination of the guarantee; or (d) Lender's failure to pay the annual fee.

8. Any amount due under this Agreement will be determined and paid as provided in 7 C.F.R. part 3565 in effect on the date of this Agreement.

9. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

### 10. Construction Loans

When acceptable credit enhancements are provided, the Agency may guarantee construction advances of up to 90 percent of the work-in-place, or up to 90 percent of the amount advanced, whichever is less. The Lender will provide the Finance Office with status reports as the loan is advanced.

The Loan Note Guarantee will not convert to a permanent guarantee on the loan until the pro-forma underwriting and rent-up assumptions listed in this Agreement have been met for a period of 90 consecutive days, or an escrow has been established in an amount that will equal pro-forma rental income when combined with actual receipts from Project operations. Rental income may not be achieved through use of short-term leases or any type of rental concessions.

11. All notices and actions will be sent to the Government through \_\_\_\_\_ (Agency) for \_\_\_\_\_ (State) at the following mailing address:

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UNITED STATES OF AMERICA  
RURAL DEVELOPMENT

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Assumption Agreement by: \_\_\_\_\_  
(Transferee)

Dated: \_\_\_\_\_

Assumption Approved by the Agency \_\_\_\_\_  
(new note, if taken, is attached)

Dated: \_\_\_\_\_

Assumption Agreement by: \_\_\_\_\_  
(Transferee)

Dated: \_\_\_\_\_

Assumption Approved by the Agency \_\_\_\_\_  
(new note, if taken, is attached)

Dated: \_\_\_\_\_